Ratnam was an actual accomplice, Mr. Regester suggested that he should have been regarded as one because there was evidence on the record that :—

(a) Ratnam knew of the intention of the first appellant to commit the murder;
(b) The first appellant advised Ratnam to go into hiding immediately after the murder was committed and he would not have done this if Ratnam had not been concerned in the murder;
(c) Ratnam made no attempt to put out the fire which had been started to cover up the murder;
(d) Ratnam, like the witness Govindan, had been arrested by the police when they came to investigate the murder.

Mr. Regester referred us to several Indian cases to show who is an accomplice. We need not make reference to those cases because they all depend on their own particular facts.

He drew our attention to the judgment of this Court in the case of *Goh Ah Yew v. Public Prosecutor*[1] in which at page 152 the following passage appears :—

"We must dissent from the proposition that it is only one who could be jointly charged with the same offence as the accused who is an accomplice."

and argued from that that the learned trial Judge had directed the assessors in too narrow a sense when he told them :—

"Now an accomplice is a person who is concerned in a crime; he is an associate or one who sustains such a relation to the crime that he could be charged with the accused."

It will be observed, however, that this direction does not conflict with the passage above cited because the learned trial Judge put the matter in the alternative — either an associate or one who could be charged with the crime.

We think it is impossible to lay down a hard and fast rule as to what circumstances will render it necessary to class a witness as an accomplice. Each case must depend, to a large extent, upon its own facts. We desire, however, to express our agreement with a passage from the judgment in the Indian case of *Hafijuddi v. Emperor*[2] which reads as follows :—

"So far as the statutory provisions are concerned there is nothing in law to justify the proposition that the evidence of a witness, who happens to be cognisant of a crime, or who made no attempt to prevent it, or who did not disclose its commission, should only be relied on to the same extent as that of an accomplice. The real question in such a case was the degree of credit to be attached to the testimony of such a witness; and that depends on all the facts and circumstances of the particular case."

With regard to the four points put forward by Mr. Regester as showing that the fourth witness was an accomplice we would point out that all these must be considered in the light of the fact that this witness was in a subordinate position to and therefore, to a large extent, under the orders of the first appellant.

We are of opinion that in the circumstances of this case the learned trial Judge was right in holding that the fourth prosecution witness was not an accomplice. He gave the assessors careful directions to enable them to evaluate the degree of credit to be attached to the testimony of this witness; and he concluded his summing-up with a warning that if they had any doubt about the evidence of the first and fourth witnesses their opinions should be that the accused were not guilty.

We therefore held that there had been no misdirection in this case and we accordingly dismissed the appeal.

Appeal dismissed.

YAP FOOK YEW AND ANOTHER v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Spenser-Wilkinson, J.)
December 6, 1949]

[K.L. — Criminal Appeal No. 47 of 1949]

Evidence — Demeanour of witnesses — Identification parade — Defence called upon before close of prosecution case — Criminal Procedure Code, ss. 173(f) and 425.

In this appeal Counsel for the appellants argued that the Magistrate had relied too much upon the demeanour of the witnesses. He admitted that no mention of demeanour was made in the grounds of decision but suggested that, as the Magistrate had given no reason for accepting the evidence of the prosecution witnesses, he must have been guided by their demeanour. Besides the points raised on the hearing of the appeal, the Judge himself observed two irregularities from a perusal of the record. Firstly, his Lordship found on page 14 of the record the following note:—

"Prosecution closed except that one more police witness Corporal 78 may be called later. At present not available."

After this note had been made the first appellant gave evidence from the witness box. The further prosecution witness referred to in the Magistrate's note was then allowed to give evidence. Secondly, it appeared that after all the evidence had been given, both by the prosecution and by the appellants the Court called a witness whose name was mentioned by one of the prosecution witnesses earlier in the case.

Held, (1) that an Appellate Court will always hesitate to over-rule the decision of the judge who has seen and heard the witnesses. The Appellate Court will interfere only when a trial judge has relied upon the demeanour of witnesses in a case where other evidence indicate that such reliance was misplaced; and (2) that if, at the close of the case for the prosecution, further necessary witnesses are not then available the only proper course is either to adjourn until the witnesses are available or to proceed without them. In view of the provisions of s. 173 (f) of the Criminal Procedure Code, it is most important that it should be quite clear when the prosecution case is closed; and, subject to the question of evidence in rebuttal, which is only permitted in exceptional circumstances, the accused should never be called upon for his defence until the whole of the evidence

for the prosecution has been given. It has been laid down by the Court of Criminal Appeal in England that after the defence has been closed no further evidence should be called either by the Court or by either party unless the cause for such evidence is one which no human ingenuity could have foreseen.

Cases referred to :—

(1) *Yuill v. Yuill* L.R. (1945) P. 15; (1945) 1 All E.R. 183.

(2) *Watt v. Thomas* L.R. (1947) A.C. 484.

(3) *Tara Singh and Another v. Public Prosecutor* (1949) M.L.J. 88.

(4) *Public Prosecutor v. Yeoh Chee Bah and two Others* (Crim. Misc. Application No. 7 of 1947) unreported.

(5) *Rex v. Day* (1940) 1 All E.R. 402.

(6) *Rex v. Frost* 9 C. & P. 129.

CRIMINAL APPEAL.

K. K. Benjamin for the appellants.

Tunku Abdul Rahman for the respondent.

The facts and arguments sufficiently appear from the judgment.

Cur. Adv. Vult.

Spenser-Wilkinson, J. : — The two appellants in this case were charged before the Magistrate in Kuala Lumpur with extortion under section 384 of the Penal Code. They were both convicted and sentenced to nine months' rigorous imprisonment. They both appealed against their convictions.

The facts disclosed by the prosecution evidence were that at about 5 a.m. on the 7th July, 1949, the two appellants, the first of whom was a Chinese detective and the second a Malay detective-sergeant, knocked at the door of the house of a pork-seller in Imbi Road whereupon the son of the pork-seller and an assistant who slept in the same room with him went to the front door and opened it. The first appellant demanded $200/- for coffee-money on the ground that the witness had been slaughtering pigs illegally. He threatened that if the witness failed to pay he would be banished to China and gaoled. After some discussion the demand was reduced to $150/-. The first witness then opened a money-box and gave the first appellant $116/-. The first appellant then walked out saying that there was a further sum of $34/- to be paid and the first witness promised to pay this money at Main Pudu Road near the Market. Throughout these proceedings the second appellant remained at the door armed with a revolver.

Later the same morning at about 9 a.m. both the appellants appeared near the witness's stall in Pudu Road and the first prosecution witness handed a further sum of $34/- to the first appellant.

The first witness complained to his father soon after the appellants left the house and after the further $34/- had been handed over a report was made to the police on the advice of one Kok Ah Ngit. Subsequently at an identification parade held later that day the witnesses identified the first appellant as the man who had demanded money that morning and at a further parade held the next day they picked out the second appellant as the Malay who had accompanied the first appellant.

The defence put forward by both appellants was a complete denial of the whole affair and there was also a suggestion of an alibi in that there is an entry in a book at the Detective Office at High Street made at 5 a.m. on the 7th July, 1949 to the effect that Detective No. 498 (first appellant) and Sergeant 666 (second appellant) returned at that time from investigation of a case. There was evidence that this entry was actually made by the first appellant himself.

The Magistrate accepted the evidence of the prosecution witnesses and was satisfied as to the evidence of identity.

Mr. Benjamin who appeared for both appellants put forward various arguments suggesting that the decision of the Magistrate was wrong. His first point was that, following the decisions in *Yuill v. Yuill*[1], *Watt v. Thomas*[2] and *Tara Singh and Another v. Public Prosecutor*[3] the Magistrate had relied too much upon the demeanour of the witnesses. Mr. Benjamin admitted that no mention of demeanour is made in the grounds of decision but suggested that, as the Magistrate gave no reasons for accepting the evidence of the prosecution witnesses, he must have been guided by their demeanour. In my opinion, however, the cases cited have no bearing at all upon the appeal now before me. Those cases deal with the position where a trial Judge has relied upon the demeanour of witnesses in a case where other evidence indicates that such reliance was misplaced. All three cases reiterate the principle that an Appellate Court will always hesitate to over-rule the decision of the judge who has seen and heard the witnesses. In the present case the Magistrate had the advantage of seeing and hearing the witnesses giving their evidence and was, therefore, able to take their demeanour into account amongst other considerations. There is no indication in the record that he relied solely upon demeanour. I can see nothing on the record which suggests that he ought not to have accepted the evidence which in fact he did accept.

The next point related to the identification parade. Some evidence was given by a defence witness that whilst he was cleaning a car in front of the Detective Office he saw the first and second prosecution witnesses outside the Inspector's Office on the verandah and that he saw the second appellant coming that way in front of these two witnesses. The witness admitted in cross-examination that at the time he saw the second appellant he was not in uniform. This does not accord with the evidence of the inspector who admits that these witnesses at first waited outside in a room on the verandah but states that the second appellant had arrived in uniform and was sent away to change into plain clothes and that the two witnesses were placed in the Inspector's Office thirty yards away. The highest, therefore, that this point can be put on behalf of the appellant is this: that before the identification parade the two witnesses may have seen this sergeant in uniform entering the police station. If on this occasion they immediately recognised this man as the man who had helped to extort money from them then there was clearly nothing wrong with the subsequent identification. If on the other hand, the suggestion is that because they saw a sergeant in uniform walking into a police station they immediately jumped to the conclusion that this particular sergeant must be the person who had been present at the extortion then it seems to me that the suggestion is somewhat far fetched. Even if the evidence upon which this suggestion was based is believed there is nothing unusual in seeing a police sergeant walking into a police station, or to suggest to the minds of witnesses, that any sergeant in uniform whom they see at the police station is the particular sergeant who was present at the incident. Moreover the witnesses concerned specifically denied having seen a sergeant in uniform before the parade.

A third point put forward by Mr. Benjamin is on the question of timing. He pointed out that if in fact the appellants or one of them was in the police station at 5 a.m. in the morning in question they could not have been at Imbi Road at 5 a.m. extorting money from the witnesses. The evidence of P.W. 1 as to this, according to the wording on the record is "On 7.7.49 at 5 p.m. I was sleeping in my house." In the case of P.W. 2 the wording is "On 7.7.49 at 5 a.m. I was in bed with Prosecution Witness 1". It rather looks as though these answers were given to the question "what were you doing on the 7.7.49 at 5 a.m.?" If that be so, then it was wrong to lead the witnesses as to the exact time and if this case really depended on exact timing such a method of examining witnesses would be not only improper but probably fatal to the prosecution. It is clear, however, that the defence in this case does not depend upon exact timing. Very few persons who are awakened suddenly by knocks at the door in the small hours of the night are able to say with any accuracy what the time is and times given by this class of witness are invariably vague. Neither of the appellants gave any satisfactory account of his movements between 5 a.m. and 9.40 a.m.; nor did either of them produce any alibi for the occasion at about 9.15 a.m. when they were both seen near the stall and the first prosecution witness handed the further $34/- to the first appellant. I do not think there is, therefore, any substance in this point.

I was less concerned with the points raised on behalf of the appellants on the hearing of the appeal than I was by two irregularities which I myself observed from a perusal of the record. In the first place on page 14 of the record the following note appears :—

"Prosecution closed except that one more police witness Corporal 78 may be called later. At present not available."

After this note had been made the first appellant gave evidence from the witness box. The further prosecution witness referred to in the Magistrate's note was then allowed to give evidence. This, in my opinion, was irregular. If, at the close of the case for the prosecution, further necessary witnesses are not then available the only proper course is either to adjourn until the witnesses are available or to proceed without them. In view of the provisions of section 173(f) of the Criminal Procedure Code it is most important that it should be quite clear when the prosecution case is closed; and, subject to the question of evidence in rebuttal, which is only permitted in exceptional circumstances, the accused should never be called upon for his defence until the whole of the evidence for the prosecution has been given. Fortunately in this case the evidence thus given in the wrong order was not very material and merely confirmed an entry which had already been given in evidence. It is quite clear, therefore, that this irregularity in no way caused any failure of justice.

The second irregularity was that after all the evidence has been given both for the prosecution and by the appellants the Court called one Kok Ah Ngit, whom I have referred to earlier. This witness had been mentioned by P.W. 3 as the person who had advised him to report to the police. He gave evidence confirming this. No doubt the Magistrate was under the impression that he had power under section 425 of the Criminal Procedure Code to call this witness. But

although that section empowers a Court to call evidence "at any time" there is a clear and distinct limitation upon this discretionary power. I have had occasion before to point out that although a section of the Code may give the Court a very wide discretion such discretion must be exercised subject to such well-known legal principles as are applicable in each case, *Public Prosecutor v. Yeoh Chee Bah and two Others*[4]. It has been laid down by the Court of Criminal Appeal in England that after the defence has been closed no further evidence should be called either by the Court or by either party unless the cause for such evidence is one which no human ingenuity could have foreseen, *Rex v. Day*[5]. The rule is no new one and had been laid down in *Rex v. Frost*[6] where it was decided that the usual rule that the prosecution must close their case before the defence begins would also apply to a case where a witness is called in a criminal trial by the Judge after the case for the defence is closed. It is clear, therefore, that the calling of this witness at that stage was irregular.

Mr. Benjamin urged upon me that the calling of a witness at this stage of the trial must have prejudiced the appellants and may have influenced the Magistrate in his decision. I was unable to agree with this submission. I do not think that this particular evidence carried the matter any further and I do not think it can have influenced the Magistrate's decision in any way. For these reasons I held that section 422 of the Criminal Procedure Code applied and that this was not a ground for interfering with the decision of the Magistrate.

On the whole I was satisfied that the decision of the Magistrate was right and that the irregularities above referred to did not occasion any failure of justice.

For these reasons I dismissed the appeal.

Appeal dismissed.

PUBLIC PROSECUTOR v. DORAISAMY.

[Crim. Rev. Juris. (Thomson, J.) December 17, 1949]

[Ipoh — Misc. Crim. Application No. 21 of 1949]

Emergency (Registration Areas) Regulations, 1948, s. 10(1) — Production of Identity Card within reasonable time — Interpretation of.

In this case the accused Doraisamy was charged that he failed to produce his Identity Card when it was demanded from him by a Police Officer. It appeared that the Identity Card was produced about an hour later. He was acquitted on the ground that what the Regulation required was the production of an Identity Card within a reasonable time of its production being demanded.

Held, (1) that what the citizen is required to do when his Identity Card is demanded of him is, unless he is allowed some greater time by the Police Officer demanding it, to proceed forthwith to take all reasonably possible steps to produce his card at the earliest possible moment. It is impossible to lay down any rule of universal application as to what will constitute such steps. If he has his card in his pocket, it is clearly his duty to take it out of his pocket and produce it. If his card is in some place of safety, it is clearly his duty to proceed to that place, if he is physically permitted to do so, and return with the card with all reasonable speed. Whether or not he has complied with the law, whether or not he had taken all reasonably possible steps with all reasonable speed to comply with the demand of the Police Officer is in every individual case a question of fact to be determined by the Court trying the case. (2) That the question of what constitutes an offence under Regulation 10 of the Regulations does not necessarily have a specific bearing on the exercise by the Police of their powers under Regulation 20 to arrest without warrant any person suspected of the commission of an offence against the Regulations. It may well be that a person who instead of carrying his Identity Card upon him leaves it in a place of safety would be immune from criminal liability under Regulation 10, but it does not follow that he would not be exposed, and exposed without remedy, to the danger of being arrested by a Police Officer who genuinely took the view that in all the circumstances of the particular case failure to produce an Identity Card for immediate inspection made out grounds for suspicion that an Identity Card did not exist and that accordingly the party in question had committed the offence of failing to register.

Cases referred to:—

(1) *Bradley v. Bradley* 3 P.D. 47.

(2) *Hasting v. Hasting* (1948) P.D. 68.

(3) *Scott v. Scott* (1921) P.D. 107, 120.

(4) *Fox v. Fox* (1925) P.D. 157, 167.

CRIMINAL REVISION.

E. N. Griffith-Jones for Public Prosecutor.

Cur. Adv. Vult.

Thomson, J.: — The accused in this case was charged that he failed to produce his Identity Card when it was demanded from him by a Police Officer in contravention of Regulation 10(1) of the Emergency (Registration Areas) Regulations, 1948. He claimed trial. The evidence against him was that during the hours of daylight he was arrested in possession of a quantity of toddy. At the time of his arrest he did not produce his Identity Card but this was produced about an hour later by his foreman. On that the Magistrate decided there was no case for him to answer and acquitted him on the ground that what the Regulation required was the production of an Identity Card within a reasonable time of its production being demanded and that this had been done. As the matter is of some public importance, the Magistrate has now sent the case for review.

The Emergency (Registration Areas) Regulations, 1948, provide that the Mentri Besar of any State (or the Resident Commissioner in any Settlement) may